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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HEATHER BENNETT, WILLIAM BENNETT,
ANN COLE-HATCHARD, LAUREEN
CONNELLY, DONNA DELARM, JILL
DONOVAN, JEAN FREER, STEFANIE
GAUDELLI, ELEANOR GOLD, GRACE
HENRIQUEZ, MARION LEAVEY, MARGARET
MACKEY, DIANE REEVES, CHRISTINA
SAGARIA, ERICA SALERNO, ANDREW
SCHWARTZ, CAROL SCHULER, ANTOINETTE
WHITE, DEBORAH WHITTAKER, and CIVIL
SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000 AFSCME, AFL-CIO, ROCKLAND
COUNTY LOCAL 844, COUNTY OF ROCKLAND
UNIT 8350,

Plaintiffs,

v.

COUNTY OF ROCKLAND and KATHLEEN
TOWER-BERNSTEIN, in her individual capacity,

Defendants.

FIRST AMENDED COMPLAINT

Civil Action No. 7:17-cv-02573 (KMK)

NATURE OF THE ACTION

1. This is an action brought by Plaintiff for damages and other relief pursuant to 42 U.S.C. § 1983 based on Defendants' violation of Plaintiffs' First and Fourteenth Amendment

Constitutional rights.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 in that Plaintiffs' claims are brought under 42 U.S.C. § 1983.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in the State of New York in Rockland County, within the Southern District of New York.

PARTIES

4. Plaintiff Heather Bennett is and at all times relevant herein was employed by the County of Rockland as a Probation Officer and resides in Stony Point, Rockland County, New York.

5. Plaintiff William Bennett is and at all times relevant herein was employed by the County of Rockland as a Senior Probation Officer and resides in Stony Point, Rockland County, New York.

6. Plaintiff Ann Cole-Hatchard is and at all times relevant herein was employed by the County of Rockland as a Probation Officer and resides in Stony Point, Rockland County, New York.

7. Plaintiff Laureen Connelly is and at all times relevant herein was employed by the County of Rockland as a Senior Probation Officer and resides in Blauvelt, Rockland County, New York.

8. Plaintiff Donna Delarm is and at all times relevant herein was employed by the County of Rockland as a Probation Officer and resides in Pomona, Rockland County, New York.

9. Plaintiff Jill Donovan is and at all times relevant herein was employed by the County of Rockland as in the title of Data Entry I and resides in Highland Falls, Orange County, New York.

10. Plaintiff Jean Freer is and at all times relevant herein was employed by the County of Rockland as a Probation Officer and resides in Bloomingburg, Sullivan County, New York.

11. Plaintiff Stephanie Guadelli is and at all times relevant herein was employed by the County of Rockland as a Probation Officer and resides in Park Ridge, Bergen County, New Jersey.

12. Plaintiff Elanor Gold is and at all times relevant herein was employed by the County of Rockland as a Probation Officer and resides in Rockland County, New York.

13. Plaintiff Grace Henriquez is and at all times relevant herein was employed by the County of Rockland as a Supervising Probation Officer and resides in Thiells, Rockland County, New York.

14. Until her retirement on December 17, 2016, and at all other times otherwise relevant herein, Plaintiff Marion Leavey up was employed by the County of Rockland as a Probation Officer and resides in Pearl River, Rockland County, New York.

15. Plaintiff Margaret Mackey is and at all times relevant herein was employed by the County of Rockland as a Senior Probation Officer and resides in Middletown, Orange County, New York.

16. Plaintiff Diane Reeves is and at all times relevant herein was employed by the County of Rockland as a Probation Officer and resides in West Nyack, Rockland County, New York.

17. Plaintiff Christina Sagaria is and at all times relevant herein was employed by the County of Rockland as a Probation Officer and resides in Havestraw, Rockland County, New York.

18. Plaintiff Erica Salerno is and at all times relevant herein was employed by the County of Rockland as a Probation Officer and resides in New City, Rockland County, New York.

19. Plaintiff Andrew Schwartz is and at all times relevant herein was employed by the County of Rockland as a Supervisor and resides in Nyack, Rockland County, New York.

20. Plaintiff Carol Schuler is and at all times relevant herein was employed by the County of Rockland in the title of Data Entry I and resides in New City, Rockland County, New York.

21. Plaintiff Antoinette White is and at all times relevant herein was employed by the County of Rockland as a Probation Officer and resides in Nyack, Rockland County, New York.

22. Plaintiff Deborah Whittaker is and at all times relevant herein was employed by the County of Rockland as a Principle Clerk Typist and resides in Northvale, Bergen County, New York.

23. Foregoing Plaintiffs Heather Bennett, William Bennett, Ann Cole-Hatchard, Laureen Connelly, Donna Delarm, Jill Donovan, Jean Freer, Stefanie Gaudelli, Eleanor Gold, Grace Henriquez, Marion Leavey, Margaret Mackey, Diane Reeves, Christina Sagaria, Erica Salerno, Andrew Schwartz, Carol Schuler, Antoinette White and Deborah Whitaker, employed in various capacities by the County of Rockland, are referred to herein as Employee Plaintiffs.

24. Plaintiff Civil Service Employees Association, Inc., Local 1000 AFSCME, AFL-CIO, Rockland County Local 844, County of Rockland Unit 8350 (herein Plaintiff CSEA) was

and is a voluntary incorporated association, more specifically a labor organization, whose president from in or about 2010 to in or about 2014 was P.T. Thomas and whose president from in or about 2014 to the present was and remains Thomas Ninan; at all times relevant herein, Petitioner's business address was and remains 873 Route 45, Suite 203, New City, New York 10956.

25. Plaintiff CSEA is and at all times relevant herein was the recognized bargaining representative for a negotiating unit comprising certain employees of the County of Rockland, including but not limited to Employee Plaintiffs.

26. Among the purposes for which Plaintiff CSEA was formed -- and all times relevant herein existed -- is protecting and advocating for the contractual, statutory and Constitutional rights of the employees it represents.

27. At all times relevant herein, Plaintiff CSEA discharged such purpose by representing its membership in collective bargaining, safeguarding the statutory and Constitutional rights of its members in the workplace, advocating on behalf of its employee members in connection with retaliation and discrimination and representing its members in connection with formal and informal disciplinary action.

28. At all times relevant herein, Plaintiff CSEA discharged such purpose through both direct action on behalf of its members and by retaining and providing legal representation to take such actions on their behalf.

29. Defendant County of Rockland (herein Defendant County) is and at all times relevant herein was a municipal corporation and governmental subdivision of the State of New York.

30. Defendant Kathleen Tower-Bernstein (herein Defendant Tower-Bernstein) is and at all times relevant herein was employed by Defendant County as Director of the Rockland County Department of Probation and upon information belief, at all times relevant herein resided in the State of New York.

31. At all times relevant herein, Defendant Tower-Bernstein possessed final authority to establish and implement policy of Defendant County with respect to the supervision and discipline of employees of Defendant County's Department of Probation, including with respect to the Plaintiff Employees.

EMPLOYEE PLAINTIFFS' SPEECH ON A MATTER OF PUBLIC CONCERN

32. On or about June 9, 2016, Employee Plaintiffs signed a letter addressed to the Members of the Rockland County Legislature articulating concerns regarding the proposed relocation of the Department of Probation.

33. Employee Plaintiffs' concerns as articulated by the June 9, 2016 Letter include: (i) that the proposed relocation constituted a further dismantling of an already understaffed department to the detriment of its operation and provision of services to the public, (ii) that the defendants served by the County of Rockland Department of Probation (herein the Department) will have difficulty or will be unable to travel to the proposed new location, (iii) that the proposed relocation will distance and isolate the Department from the other County agencies with which it routinely works, (iv) that the proposed new location poses security and safety concerns for both Department employees and clients; (v) that the proposed relocation would adversely affect the Department's administrative and clerical and result in the loss of revenue and necessitate additional expenditures by Defendant County, and (vi) that the offices within the

proposed new location are dirty and unhygienic and require additional modification before they will be suitable for use.

34. The June 9, 2016 Letter further requests consideration of the Department's role in the daily operation of the judicial system of Defendant County by, inter alia, supervising of criminal defendants throughout the criminal court system, monitoring juvenile defendants within the Family Court, working with individuals in connection with pre-sentencing matters,

35. As stated therein, the June 9, 2016 Letter serves as a "formal request for relief, in the form of an opportunity to speak with the Rockland County Legislature at their [sic] next meeting."

36. In addition to the County Legislature, the June 9, 2016 Letter was addressed to and upon information and belief was delivered to various Rockland County officials, including the County Executive, the Sherriff, justices of the Supreme, County and Justice Courts and the County Public Defender and District Attorney.

DEFENDANTS' RETALIATION AGAINST PLAINTIFF EMPLOYEES

37. On or about June 21, 2016, Defendant Tower-Bernstein directed all employees of the Department of Probation to attend a mandatory meeting that day. Employees who were unable to attend the mandatory meeting on June 21, 2016 were required to meet separately with Defendant Tower-Bernstein on June 22, 2016.

38. At the mandatory meetings on or about June 21 and 22, 2016, Defendant Tower-Bernstein advised the employees of the Department of Probation that the individuals who signed the June 9, 2016 Letter should not have done so, that they had no right to do so and that it reflected poorly on the Department of Probation and upon her.

39. At the mandatory meetings on or about June 21 and 22, 2016, Defendant Tower-Bernstein further advised employees of the Department of Probation that any future public speech on the issue of the location of Department operations would be result in the imposition of disciplinary action, up to and including termination. Defendant Tower-Bernstein stated that probationary employees who signed the June 9, 2016 Letter could be dismissed from service for having done so.

40. At the mandatory meetings on or about June 21 and 22, 2016, Defendant Tower-Bernstein further advised employees of the Department of Probation that the Department of Probation operations would not be relocating, that the decision not to relocate was not a result of the June 9, 2016 Letter and that as a result of the decision not to relocate, the Department would be required to share space with other County operations and Department employees would be required to limit their office furnishings to a desk, chair and filing cabinet and would not be permitted to have personal belongings within their work spaces.

41. On or about June 21, 2016, Defendant Tower-Bernstein sent Plaintiff Employees a "Memorandum of Warning."

42. The June 21, 2016 Memorandum of Warning states that it was prepared in response to the June 9, 2016 Letter signed by Plaintiff Employees.

43. The June 21, 2016 Memorandum of Warning reminds its recipients that:

. . . authority to manage the Rockland County workforce, including location of departments rests solely with the County Executive. Authority to speak on behalf of individual departments rests with the appointing authority, in conjunction with the Executive office. By submitting a letter as "members of the Rockland County Department of Probation", you have demonstrated a disregard for chain of command, a disrespect for the Office of the County Executive and an ignorance of the potential repercussions of your action, including political, economic and public perception.

44. The June 21, 2016 Memorandum of Warning further advises that "further communication of this nature may result in disciplinary action taken against you."

45. Upon information and belief, the Rockland County Legislature had placed the issue of the location of Department of Probation operations on its agenda for its Full Legislative Session scheduled for June 21, 2016.

46. Several of the Plaintiff Employees had intended to address the Legislature on the issue of the location of Department operations but declined to do so based on the comments made by Defendant Tower-Bernstein in the mandatory meeting held on June 21, 2016 and/or the June 21, 2016 Memorandum of Warning.

PLAINTIFF CSEA'S STANDING

47. Plaintiff CSEA asserts claims on behalf of its members for injunctive and declaratory relief in connection with the retaliation and disparate treatment in violation of their Constitutional rights described herein.

48. Plaintiff CSEA does not seek monetary or compensatory damages on behalf of its members or otherwise.

49. Absent its participation in this action, Plaintiff CSEA's members, including Plaintiff Employees, would otherwise have standing to sue in their own right to seek the injunctive and declaratory relief sought by Plaintiff CSEA herein.

50. Through its participation in this action, Plaintiff CSEA seeks to protect interests that are germane to its purpose, to wit, safeguarding the statutory and Constitutional rights of its members in the workplace, advocating on behalf of its employee members in connection with

retaliation and discrimination and representing its members in connection with formal and informal disciplinary action.

51. Neither the claims asserted by Plaintiff CSEA nor the relief requested by it requires the participation of its individual members in this action: by way of its claims in the instant action, Plaintiff CSEA does not seek recovery of damages on behalf of its members or individualized relief on their behalf. Rather, Plaintiff CSEA's participation in this action raises a pure question of law addressed to the constitutionality of Defendant's conduct and seeks generalized declaratory and injunctive relief that would inure to the benefit of its entire membership.

FIRST CAUSE OF ACTION
(42 U.S.C. § 1983 -- First Amendment)

52. Plaintiffs repeat and reiterate each and every allegation contained in the foregoing paragraphs of this Complaint as if set forth fully herein.

53. At no point relevant herein did the official duties and responsibilities of Plaintiff Employees or the members of Plaintiff CSEA who are signatories to the June 9, 2016 Letter include advising the County Legislature or other County officials to whom such Letter was addressed on issues such as the proposed relocation of the Department.

54. In articulating to the County Legislature and other public officials their concerns associated with the relocation of the Department from New City, New York to Pomona, New York, including the anticipated negative impact on the Department's ability to provide services to the public, Employee Plaintiffs and the members of Plaintiff CSEA who are signatories to the June 9, 2016 Letter engaged in speech on a matter of public concern.

55. Defendants have no adequate justification for treating Employee Plaintiffs differently from any other member of the general public and such treatment is purely retaliatory.

56. The mandatory meetings on June 21 and 22, 2016, attended by the Plaintiff Employees and members of Plaintiff CSEA who are signatories to the June 9, 2016 Letter, at which Defendant Tower-Bernstein advised that further public speech on the issue of the location of Department operations would be result in the imposition of disciplinary action, up to and including termination would deter a similarly-situated individual of ordinary firmness from exercising his or her Constitutional rights.

57. The June 21, 2016 Memorandum of Warning, advising Employee Plaintiffs and members of Plaintiff CSEA who are signatories to the June 9, 2016 Letter that "further communication of this nature may result in disciplinary action taken against you," would deter a similarly situated individual of ordinary firmness from exercising his or her Constitutional rights.

58. The speech by Employee Plaintiffs and members of Plaintiff CSEA in the June 9, 2016 Letter was a motivating factor in Defendant Tower-Bernstein's scheduling and conducting the June 21 and June 22, 2016 mandatory meetings at which she advised such individuals that they should not have signed the June 9, 2016 Letter.

59. The speech by Employee Plaintiffs and members of Plaintiff CSEA in the June 9, 2016 Letter was a motivating factor in Defendants' preparation and issuance of the June 21, 2016 Warning Memorandum, which states that it "was prepared in response" to the June 9, 2016 Letter.

60. The June 21 and 22, 2016 mandatory meetings at which Defendant Tower-Bernstein advised Employee Plaintiffs and members of Plaintiff CSEA that future speech on the issue of the location of Department operations would result in disciplinary action up to and including termination and the June 21, 2016 Warning Memorandum advising Employee Plaintiffs and members of Plaintiff CSEA that "further communication of this nature may result

in disciplinary action taken against you," constitute speech restrictions beyond what is necessary for Defendant County and the Department to operate efficiently and effectively.

61. The retaliatory acts of Defendant Tower-Bernstein are acts that violate clearly established Constitutional rights of which a reasonable person would have known, including Employee Plaintiffs' rights under the First and Fourteenth Amendments to the U.S. Constitution.

62. For all relevant time periods up until in or about June 22, 2016, Defendant Tower-Bernstein was the municipal official within Defendant County with final decision-making authority over Plaintiff Employees and she in turn caused the violation of Plaintiff Employees' civil rights.

63. Defendant County failed to properly train and/or supervise Defendant Tower-Bernstein, amounting to deliberate indifference to Plaintiffs' Constitutional rights to be free from First Amendment retaliation.

64. By engaging in the above conduct, Defendants unconstitutionally inhibited and discouraged the exercise of Plaintiff CSEA members' free speech rights and subjected Plaintiff CSEA members to disparate treatment.

65. On behalf of its members, Plaintiff CSEA seeks declaratory and prospective injunctive relief as set forth below, including but not limited to a declaration that Defendants' actions as alleged herein constituted a violation of the Constitutional rights of its members who are signatories to the June 9, 2016 Warning Memorandum and an injunction enjoining Defendants from violating such rights going forward.

66. As a result of Defendants' conduct, Employee Plaintiffs have suffered damages and as a result seek relief as set forth below, including but not limited to injunctive relief

directing the removal and retraction of the June 21, 2016 Warning Memorandum from their personnel files and compensatory damages for emotional distress and mental anguish.

SECOND CAUSE OF ACTION
(42 U.S.C. § 1983 -- Fourteenth Amendment)

67. Plaintiffs repeat and reiterate each and every allegation contained in the foregoing paragraphs of this Complaint as if set forth fully herein.

68. At no point relevant herein did the official duties and responsibilities of Plaintiff Employees include advising the County Legislature or other County officials to whom the June 9, 2016 Letter was addressed on issues such as the proposed relocation of the Department.

69. In articulating to the County Legislature and other public officials their concerns associated with the relocation of the Department from New City, New York to Pomona, New York, including the anticipated negative impact on the Department's ability to provide services to the public, Employee Plaintiffs engaged in speech on a matter of public concern.

70. Defendants have no adequate justification for treating Employee Plaintiffs differently from any other member of the general public and such treatment is purely retaliatory.

71. The mandatory meetings on June 21 and 22, 2016, attended by the Plaintiff Employees and members of Plaintiff CSEA who are signatories to the June 9, 2016 Letter, at which Defendant Tower-Bernstein advised that further public speech on the issue of the location of Department operation would be result in the imposition of disciplinary action, up to and including termination would deter a similarly-situated individual of ordinary firmness from exercising his or her Constitutional rights.

72. The June 21, 2016 Memorandum of Warning, advising Employee Plaintiffs and members of Plaintiff CSEA who are signatories to the June 9, 2016 Letter that "further

communication of this nature may result in disciplinary action taken against you," would deter a similarly situated individual of ordinary firmness from exercising his or her Constitutional rights.

73. The speech by Employee Plaintiffs and members of Plaintiff CSEA in the June 9, 2016 Letter was a motivating factor in Defendant Tower-Bernstein's scheduling and conducting the June 21 and June 22, 2016 mandatory meetings at which she advised such individuals that they should not have signed the June 9, 2016 Letter.

74. The speech by Employee Plaintiffs and members of Plaintiff CSEA in the June 9, 2016 Letter was a motivating factor in Defendants' preparation and issuance of the June 21, 2016 Warning Memorandum, which states that it "was prepared in response" to the June 9, 2016 Letter.

75. The June 21 and 22, 2016 mandatory meetings at which Defendant Tower-Bernstein advised Employee Plaintiffs and members of Plaintiff CSEA that future speech on the issue of the location of Department operations would result in disciplinary action up to and including termination and the June 21, 2016 Warning Memorandum advising Employee Plaintiffs and members of Plaintiff CSEA that "further communication of this nature may result in disciplinary action taken against you," constitute speech restrictions beyond what is necessary for Defendant County and the Department to operate efficiently and effectively.

76. Defendants have no adequate justification for treating Employee Plaintiffs and the members of Plaintiff CSEA who are signatories to the June 9, 2016 Letter differently from any other member of the general public and such treatment is purely retaliatory.

77. By issuing the June 21, 2016 Warning Memorandum to Employee Plaintiffs and the members of Plaintiff CSEA who are signatories to the June 9, 2016 Letter, Defendants intentionally treated Plaintiffs differently from others similarly situated.

78. There is no rational basis for Defendants' disparate treatment of Plaintiffs.

79. The retaliatory acts of Defendant Tower-Bernstein are acts that violate clearly established Constitutional rights of which a reasonable person would have known, including Employee Plaintiffs' rights under the First and Fourteenth Amendments to the U.S. Constitution.

80. For all relevant time periods up until in or about June 21, 2016, Defendant Tower-Bernstein was the municipal official within Defendant County with final decision-making authority over Plaintiff Employees and she in turn cause the violation of Plaintiff Employees' civil rights.

81. Defendant County failed to properly train and/or supervise Defendant Tower-Bernstein, amounting to deliberate indifference to Plaintiffs' Constitutional rights to be free from First Amendment retaliation.

82. By engaging in the above conduct, Defendants unconstitutionally inhibited and discouraged the exercise of Plaintiff CSEA members' free speech rights and subjected Plaintiff CSEA members to disparate treatment.

83. On behalf of its members, Plaintiff CSEA seeks declaratory and prospective injunctive relief as set forth below, including but not limited to a declaration that Defendants' actions as alleged herein constituted a violation of the Constitutional rights of its members who are signatories to the June 9, 2016 Warning Memorandum and an injunction enjoining Defendants from violating such rights going forward.

84. As a result of Defendants' conduct, Employee Plaintiffs have suffered damages and as a result seek relief as set forth below, including but not limited to injunctive relief directing the removal and retraction of the June 21, 2016 Warning Memorandum from their personnel files and compensatory damages for emotional distress and mental anguish.

WHEREFORE, Plaintiffs request judgment for and including:

- (i) A declaration that Defendants' conduct as alleged herein constitutes a violation of the Constitutional rights of its members who are signatories to the June 9, 2016 Warning Memorandum;
- (ii) An injunction enjoining Defendants from violating such rights prospectively;
- (iii) Individualized injunctive relief including the removal and retraction of the June 21, 2016 Warning Memorandum from the personnel files of the Plaintiff Employees;
- (iv) Compensatory damages including compensation for emotional distress and mental anguish sustained by the Plaintiff Employees as a result of Defendants' actions as alleged herein;
- (v) Monetary damages;
- (vi) Punitive damages;
- (vii) Pre-judgment interest;
- (viii) Post-judgment interest;
- (ix) Attorneys fees and costs; and
- (x) Such other and further relief as is just and proper to the Court.

Dated: Rhinebeck, New York
June 22, 2017

/s Russell G. Wheeler (RW8995)
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TOWER-BERNSTEIN, in her individual capacity,

Defendants.

CERTIFICATE OF SERVICE

Civil Action No. 7:17-cv-02573 (KMK)

The undersigned attorney hereby certifies that he caused to be electronically filed the foregoing First Amended Complaint (D.E. 15) using the Court's CM/ECF method, and that a

copy of same was served on all counsel of record, via the Court's CM/ECF method on the 22d Day of June, 2017.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 22, 2017 in Rhinebeck, New York

/s/ Russell G. Wheeler

Russell G. Wheeler (RW 8995)